

Court of Queen's Bench of Alberta

Date: May 10, 2013
Docket: 091470187Q2
Registry: Edmonton

Between:

Her Majesty the Queen

- and -

NRR

Accused

**EXCERPT of the *Voir Dire* Ruling
of the
Honourable Mr. Justice Brian R. Burrows**

The following is the final 18 pages of an 84 page *voir dire* ruling handed down in this matter on May 10, 2013 at 10:00 a.m. The filing of the first 66 pages has been delayed so that they can be properly proof read. It is anticipated the complete decision will be filed by 4:30 p.m. May 10, 2013. The portion being released at 10:00 begins at paragraph [345].

The Law

[345] NRR's application which is the subject of this *voir dire* engages or seeks to engage:

- a) the law in relation to *Charter* s. 7 (the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice),

[380] Two days after the Alberta Court of Appeal released *Wytyszyn*, the Ontario Court of Appeal released its decision in *R v. Foreman* (2002), 169 CCC (3d) 489 which held that there is no requirement of a *Starr* assessment for a statement made by the accused. Doherty J.A. said at para. 37:

Admissions, which in the broad sense refer to any statement made by a litigant and tendered as evidence at trial by the opposing party, are admitted without any necessity/reliability analysis.¹ As Sopinka J. explained in *R. v. Evans* (1993), 85 C.C.C. (3d) 97 at 104:

The rationale for admitting admissions has a different basis than other exceptions to the hearsay rule. Indeed, it is open to dispute whether the evidence is hearsay at all. The practical effect of this doctrinal distinction is that in lieu of seeking independent circumstantial guarantees of trustworthiness, it is sufficient that the evidence is tendered against a party. Its admissibility rests on the theory of the adversary system that what a party has previously stated can be admitted against the party in whose mouth it does not lie to complain of the unreliability of his or her own statements. As stated by Morgan, "[a] party can hardly object that he had no opportunity to cross-examine himself or that he is unworthy of credence save when speaking under sanction of oath" (Morgan, "Basic Problems of Evidence" (1963), pp. 265-6, quoted in McCormick on Evidence, *ibid.*, p. 140). The rule is the same for both criminal and civil cases subject to the special rules governing confessions which apply in criminal cases [emphasis added by Doherty J.A.].

[381] In *R v. Vuozzo*, 2010 ABQB 437, Hughes J. of this Court adopted this statement of the law as accurate. An appeal from her decision was dismissed by the Alberta Court of Appeal (2013 ABCA 130) without mentioning her adoption of the law stated in *Foreman*. In these circumstances, in my view, it is clear that despite any tacit suggestion to the contrary in *Wytyszyn*, *Foreman* is an accurate statement of the law on this point.

[382] The submission that NRR's statements must be assessed pursuant to the principled approach to hearsay is dismissed.

Application of the Law in NRR's case

Charter s. 7 - Was NRR's constitutional protection against self-incrimination violated?

1) Functional Detention - Was NRR subject to the control of the state?

[383] The appellate authorities which speak about the recognition of *Charter* s. 7 protection against self-incrimination in situations of functional detention emphasize the importance of contextual analysis. The specific circumstances of the case must be central to the analysis. One size will not fit all cases involving Mr. Big operations.

[384] My contextual analysis starts with the consideration of the unique characteristics of the specific target of this Mr. Big operation, NRR.

[385] Mr. Big operations succeed only where the target develops a high level of trust and confidence in the members of the feigned criminal organization. The undercover operators must manipulate the target so that he comes to place unqualified trust in those with whom he closely associates, and through them, in Mr. Big. Further, he must be made to believe that it is in his long term interests to be appreciated as a potential valuable member of the group. He must be made to want to solidify his place in the group, to gain permanent member status. The manipulation must take him to the point where he believes that to achieve his goal he must confess the crime under investigation to Mr. Big, and to want to do so.

[386] Clearly, the personal characteristics of NRR made him a perfect target. His unique personal characteristics made him extremely vulnerable to the manipulation undertaken in the Mr. Big operation. NRR's personal characteristics which made him particularly susceptible as a Mr. Big operation target were:

- NRR's youth. NRR was 16 years 7 months old when the Mr. Big operation commenced.
- NRR's family status. NRR had been apprehended from a home where the adults with whom he lived and who were responsible for him had substance abuse problems and where there was domestic violence. He became a ward of the Province. Thereafter he lived in group homes, then with relatives, and then in group homes that specialized in the care of troubled youth. He did not see his mother for 10 years. He had never known his father. He had been sexually abused by an uncle. NRR had never known a functional family.
- NRR's psychological issues. NRR had been diagnosed with a long list of psychological conditions including ADHD and Tourette disorder. Though not formally diagnosed a clinical psychologist had recently reported that he was likely diagnosable with FASD. His fragile psychological condition had been recognized and documented a year before the Mr. Big operation commenced.
- NRR's living circumstances. At the commencement of the Mr. Big operation, NRR had recently left YYC and was living at his aunt's residence. Though the details are not in evidence, the evidence does indicate that the arrangement was not entirely satisfactory to NRR and was to some extent temporary. As he was a ward of the Province, his social worker would still be responsible for ensuring he had secure living arrangements.

However, the evidence indicates (though not as clearly as might be hoped) that NRR was not in contact with his social worker.

- NRR's financial circumstances. The evidence does not disclose what financial arrangements existed for NRR as a ward of the Province. It is not in evidence whether or not he was in receipt of anything in the nature of an allowance. The evidence does indicate that he had never had a paying job. He told the undercover officers that he wanted money in order to assist his mother to move to escape an abusive relationship.

[387] The description of the scenarios by which the Mr. Big operation was carried out demonstrates that the undercover officers carefully charged their trap with bait especially attractive to NRR given his particular needs and vulnerabilities.

[388] In particular the Mr. Big's organization was set up to provide NRR with the family that had been missing from his life to that point.

[389] The operation was cast with undercover officers who NRR would see as attractive role models, who were highly respected and trusted by Mr. Big for their competence, loyalty and honesty, who were of a high level of integrity (albeit the variety of integrity appropriate to a criminal organization), who, through their involvement in Mr. Big's operation, had comfortable and exciting lives and who a 16-year-old would see as "cool". And they had come to their good lives from backgrounds similar to NRR's background.

[390] Further, Contacts #2 and #3, in their expert portrayals of the characters assigned to them, took care to show NRR that they liked him, that they understood him because as youths they had had troubles similar to his, that they had sympathy for him in relation to some of the problems he currently faced (concern for his mother, worry about his own unsettled living arrangements), that they were always available for him to talk to in person and by text message, that they had unlimited time they would willingly spend with him in activities he loved to do even though they were more appropriate to his age than theirs, that they would never say "No" to anything he asked for, and that they believed and were impressed by the unbelievable things he told them about his sexual exploits.

[391] When NRR developed an aversion to one of the undercover officers and terminated contact with the organization for 2 months, the operation was redesigned to remove that officer and to adjust the attitudes the remaining officers would display to NRR so that the development of any similar aversion would be prevented.

[392] Contacts #2 and #3 clearly succeeded in their primary function in the operation. The relationship that developed between NRR and each of them, from NRR's point of view, was extremely close, strong and valuable. They clearly succeeded in making NRR believe he had found the family he had never had. This was indisputably demonstrated on the two occasions when NRR gave Contact #3 a big hug when they parted at the end of a day.

[393] NRR's basic human needs were met while he was within the world Contacts #2 and #3 had created for him. The scenarios always involved eating. The officers frequently and regularly took NRR to restaurants and paid for his meals. The restaurants chosen would be high on the "best places to eat list" of a 16-year-old. Capitalizing on NRR's sketchy living arrangements, the undercover officers offered him clearly attractive alternative shelter – at first a hotel room, and then an apartment condo that was available to him not only when offered but when he requested (Scenarios #17 and #18).

[394] Further demonstration that the Mr. Big operation was tailored to NRR's particular youthful vulnerabilities is seen in the special activities to which Contacts #2 and #3 treated him. He was given new and exciting experiences that would particularly appeal to and excite a 16-year-old. He was taken to his first rock concert, to his first near professional hockey game at Rexall Place and on his first snowboarding trip to the mountains. In four scenarios he was given access to alcohol. He was given unsupervised access to hotel rooms and a condo apartment in which he was free to entertain his friends, so long as he and they behaved reasonably. He was free to use the bedroom for sexual encounters so long as he washed the sheets afterward.

[395] Finally, the operation provided him with what to a 16-year-old who was a ward of the Province and had never had a paying job, would have been significant amounts of cash. Contacts #1, #2, #3 and Mr. Big paid him at the end of each day he "worked" for them. The amounts were not great (they ranged from \$60 to \$150) but payments were frequent and made despite the obviously modest contribution he had made by way of "work". Logically, if he were to be accepted into the group on a permanent basis and given actual work to do, he could expect the remuneration to be very significant. Indeed that message was not only inferred, it was expressed.

[396] It is difficult not to conclude that NRR would have reasonably believed that without hardly any effort on his part, he had arrived in heaven. Who in their right mind would risk returning to the hell represented by NRR's life away from the Mr. Big operation?

[397] In my view the evidence clearly shows that, on a balance of probabilities, by the time he made the statements to Contact #2 and Mr. Big which the Crown seeks to put into evidence, NRR was subject to the power and control of the Mr. Big operation, and therefore the state, to such a degree that he was functionally detained. In the circumstances, NRR's constitutional protection against self-incrimination pursuant to *Charter* s. 7 was active.

[398] The Crown notes that NRR terminated contact with Mr. Big's organization in early January 2012 apparently as a reaction to the chastisement given him by Contact #1 after NRR breached the rules relating to the hotel room and lied about being sick. The Crown submits that this demonstrates that NRR was not only free to leave, but that he was capable of leaving. It is inconsistent with the conclusion that he was functionally detained. In my view NRR's January 2012 "walking away" does not have the significance the Crown suggests. In my view it shows no more than that as at January 11, 2012 the relationships between the undercover characters and

NRR had not yet developed to the point where he was functionally detained. By March 30, 2012, the date of NRR's first statement, they had.

2) *Coercion: Was NRR subject to coercion in making the statements?*

[399] Clearly, no negative coercion was directed to NRR by Contacts #2 and #3 and Mr. Big.

[400] NRR was never threatened even mildly. He was never exposed to violence, even feigned violence.

[401] Care was taken to involve NRR in only very "softly" criminal, feigned criminal activities. The debt collection undertaken in Scenario #6 did not involve any physical violence or even threat of physical violence to the debtor. The delivery and collection of credit card skimmers and the testing of counterfeit Play Station 3's were portrayed as relating to crimes having a Robin Hood character – robbing from the rich, giving to the poor.

[402] The scenarios involving the delivery of firearms portrayed the criminal organization as involved, albeit indirectly, in violent crime. Contact #3 said he had committed a murder in the past (see para. ? above) and it was implied that murder was on the organization's crime menu (see para ? above). NRR clearly had the understanding that Mr. Big could advise him as to how best to commit murder (see para. ? above).

[403] I accept the evidence of Contacts #1, #2 and #3 and Mr. Big that NRR was frequently told that if ever he felt uncomfortable with anything he was asked to do, or indeed, if he ever felt uncomfortable period, he could walk away. Though his walking away on January 11 does not justify the conclusion that he was not functionally detained at the time he made his statements on March 30, April 1 and April 18, it does justify the conclusion that he knew that if anything made him uncomfortable, if he felt threatened, he could walk away.

[404] NRR testified that he thought early on that the group was connected with the Hell's Angels. He also testified that in Scenario 10, when Contact #3 chastised him, he was afraid and that his fear continued after he walked away. I did not find his evidence on these points convincing. In any event, these points did not prevent NRR from willingly returning to the group in early March or from thereafter developing strong brotherly relationships with two persons who he may have believed possibly had violent propensities, albeit ones he had never seen manifested.

[405] Though NRR apparently derived the understanding that the group was capable of serious violence, I accept, that at least from March 7, 2012 on, there was never an occasion when he was threatened personally or could have perceived that he was in physical danger.

[406] I am satisfied that NRR was not coerced by fear of harm to make the statements sought to be put in evidence.

[407] However, I am satisfied that NRR was coerced by expectations and hopes of future significant benefits and advantages. He reasonably derived them, and was intended to derive them, from statements made by Mr. Big and Contacts #1, #2 and #3 before he made the confession statements sought to be put in evidence. He also derived coercive hopes of future benefits and advantages from the experience of receiving significant benefits during the 51 days he had contact with the undercover officers before he made the first confession statement. I have described the benefits he had actually received in the functional detention analysis above.

[408] In my view there is no reasonable possibility that in making the statements NRR was actually motivated by the prospect of Mr. Big using his powers to remove any residual problems that might expose NRR to a risk of being found guilty of the homicides.

[409] I am satisfied that NRR was lying to Mr. Big when he expressed concern that ADS might implicate NRR. NRR had no real concern in that regard. His statement that ADS had told the police that NRR had committed the homicides was invented fiction. ADS had in fact told the police the same story he gave in his evidence in chief and in the first 66 pages of the transcript of his statement to Mr. Big. He did not implicate NRR to Mr. Big until, like NRR, he was coerced by the benefits presented to him as available if he did so. Indeed NRR had probably learned what ADS had said in his statement to police, that he had not implicated NRR, through disclosure, the preliminary inquiry or the *voir dire* conducted by Gill J., though the evidence does not directly speak to that point.

[410] Having himself been originally charged as an accessory to murder when the police thought ADS had committed the homicides and that NRR had helped him afterward, NRR would probably realize that if ADS had any other story to tell (which appears unlikely) risk of being charged as an accessory himself would keep ADS quiet.

[411] In *R v. Hart*, Green C.J.N.L. held that Mr. Hart had been coerced to confess by the inducements associated with continued association with the feigned criminal organization. Green C.J.N.L.'s assessment of Mr. Hart's situation fits NRR's situation very well. Green C.J.N.L. said (paras. 222 and 223):

Coercion has been defined as "the denial of free and informed consent" (*White*, paragraph 42; *Fitzpatrick*, page 33). Free consent is impossible where the suspect is under the control of the state and the degree of pressure brought to bear on him is such that he might well have confessed even if innocent. While Mr. Hart chose to join the organization, he did so as a result of the inducements held out to him and the advantage taken of his vulnerability. The false construct of an attractive lifestyle that was offered to him made it irresistible, given the type of lonely, isolated and financially insecure individual he was. This was more than a self-motivated individual acting out of self-interest and greed. He was placed in a situation where, given the relatively benign alternative (a false confession that

would be kept from the authorities), he could not resist what was being offered to him. Furthermore, *informed* consent was not possible because Mr. Hart was fundamentally deceived about who he was talking to and why.

Coercion means more than threats engendering fear of adverse consequences. Coercion includes inducements. Because the right to silence developed out of the confessions rule, which applies equally to "fear of prejudice or hope of advantage", none of the *Charter* jurisprudence has suggested that the right to silence ought to be narrower, nor is there any principled reason for it to be. If the police bribe a suspect to confess that is no better for the administration of justice than if they had threatened him.

[412] I conclude that NRR's statements were coerced.

3) *Adversarial Relationship - Were NRR and the State in an adversarial relationship at the time NRR's statements were made?*

[413] There is no dispute on this point. The Crown accepts that an adversarial relationship existed when NRR made his statements.

[414] NRR had been charged. There had been a preliminary inquiry and the trial had commenced. The Crown had failed in its bid to have NRR's statement to the police on June 1, 2009 ruled admissible. The Crown had stayed the charges against NRR on July 8, 2011. The Crown could recommence the proceedings without starting over again if it did so before July 8, 2012. A large amount of evidence presented at the preliminary inquiry had not been presented to a trial judge. There had been no judicial determination as to the guilt or innocence of NRR. The Crown's suspicion that NRR and ADS had been involved in the homicides, derived from the fact that they had clearly been at the acreage around the time of the homicides, had broken into the Martin trailer, and had stolen Mr. Boenke's truck, persisted despite the stay.

[415] Clearly there was an adversarial relationship between NRR and the state. Clearly, too, Mr. Big, a police officer, was attempting on behalf of the state to obtain a statement from NRR.

4) *Unreliable Confession - In the circumstances in which the confession was made was there a real prospect of the confession being unreliable?*

[416] That NRR's statements were made while he was functionally detained, subject to coercion by inducement, and in a circumstance where he believed that no harm and only good would come to him by confessing, all create a real prospect that his confession to Mr. Big was unreliable.

[417] In addition there are many other features of the evidence and circumstances which impugn the reliability of NRR's confession to Mr. Big.

[418] In particular, in the first four tellings of his story (to Contact #3 in Scenario #23, to Contact #2 in Scenario #24, to Mr. Big in Scenario #24 before the site visits, and to Contact #2, #3 and Mr. Big in the site visits), NRR exaggerated and embellished his story generously. He included many details that he only removed when challenged by Mr. Big in their conversation after the site visits. Most of the details he removed were identified to him by Mr. Big as being incredible before he removed them. He appears to have removed them not to be truthful but to relieve Mr. Big's incredulity.

[419] Furthermore, the confession upon which NRR finally settled contains details which are obviously incompatible with the known evidence. In particular:

- that he found the gun already loaded at Double Dutch (incompatible with Ms. Trudel's DNA being on the spent shell casings),
- that he hit Mr. Boenke with a 2x4 and Ms. Trudel with a frying pan both of which he left at the scene (incompatible because no 2x4 and no frying pan were found at the scene),
- that he burned his clothes in a garbage can at the school (incompatible because police inspection of the garbage can he pointed out showed there had been no fire in it).

[420] In addition, features of NRR's Mr. Big statement are inconsistent with features of ADS' Mr. Big statement. One or both of the statements are clearly unreliable. In particular:

- while NRR said he found the gun loaded, ADS says he saw NRR load it.
- while NRR said he shot the man from 6 feet away, ADS said NRR shot him from the window of the Martin trailer.
- while NRR said he hit Mr. Boenke with a 2x4, ADS said Mr. Boenke was shot only - NRR did not hit him with anything.
- while NRR said he burned the clothes at the school in Edmonton, ADS said shortly after they drove away from the acreage when ADS got the truck stuck in a ditch, NRR went into the bush and disposed of the clothes.
- while NRR said he threw the gun away in a field or ditch near Alberta Hospital Oliver, ADS said he threw it away in a dumpster at a 7-Eleven on the outskirts of Sherwood Park.
- while NRR said he had the same shoes on when arrested as he had on at the acreage, ADS said NRR got replacement shoes when they snuck into the house of NRR's friend where they went to buy marihuana and that he threw his original shoes in a dumpster near that house.

[421] Finally, there is not one detail in NRR's statement that he could not have learned by listening to the evidence as it was presented at the preliminary inquiry. That the Mr. Big operation was undertaken after the preliminary inquiry at which NRR heard all the evidence required to manufacture a confession to impress Mr. Big is a circumstance which creates an insurmountable prospect of the confession being unreliable as evidence against NRR.

[422] The Crown submitted that there was one detail that NRR told Mr. Big that he clearly knew before the preliminary inquiry. It noted that within 6 weeks of the homicides NRR told KM that he shot Mr. Boenke between the eyes (see para. ? above).

[423] Of course NRR would have heard at the preliminary inquiry that Mr. Boenke had been shot in the head. Indeed he would have heard the medical examiner state the precise location of the entry wound. It was not between the eyes. And in fact NRR did not tell Contact #2 or Mr. Big in the recorded statements that he shot Mr. Boenke between the eyes - he said "in the head" or "in the middle of the head". Contact #3 did testify that NRR told him he shot Mr. Boenke between the eyes (see para. ? above) but there was no recording or transcript of that conversation and it is not, so far as I understand, one of the NRR statements the Crown seeks to have put in evidence. NRR's statement to KM that he shot Mr. Boenke between the eyes could easily have been no more than a youthful boast by NRR as to his marksmanship made in the context of rumors circulating among the inmates of EYOC including KM that NRR had been involved in the homicides.

[424] In my view the Crown's submission in this regard does little damage to the accuracy and force of the observation that there is nothing in NRR's statement to Mr. Big that he could not have learned at the preliminary inquiry.

[425] In my assessment the circumstances give rise to a very real and a very strong prospect that NRR's confessions to Mr. Big which the Crown seeks to put in evidence are unreliable.

5) *Abuse of Power: Would permitting the use of NRR statements made to Mr. Big give rise to a real and serious possibility of abusive conduct by the state?*

[426] Aspects of the circumstances of the Mr. Big operation in this case give rise to abuse of power concerns.

[427] First, though this is not the first case where a Mr. Big operation has targeted a youth, that the use of the technique is potentially abusive in a youth context appears to have been recognized and tacitly acknowledged by the designers of this operation. As noted they deliberately did not expose NRR to scenarios that involved violence. They attempted to limit the feigned crime which NRR saw the operation undertake to non-violent crime.

[428] They also established an alcohol policy for this operation because the target was a youth. While alcohol would be available in some scenarios, the undercover officers were instructed (or were supposed to be instructed) not to offer NRR alcohol directly and to be sure a non-alcoholic alternative was available to him. Even so, on one occasion it was not possible to follow the policy. Contact #2 could not avoid buying NRR two beers at the Rexall Place hockey game because NRR specifically asked for beer.

[429] Indeed the need, for purposes of verisimilitude, to have alcohol in the scenarios forced the officers into a compromising position. By making alcohol available to a minor they were in

breach of the law which as police officers they had a duty to uphold. (*Gaming and Liquor Act*, RSA 2000, c G-1, s 87(2)).

[430] More troubling than the alcohol dilemma, is the potential for abusive conduct arising out of NRR's psychological vulnerability. It is not likely that the designers of the operation knew the details of that vulnerability. They probably could not have accessed Dr. Massey's assessment report. But they clearly had a basis for knowing that NRR was a troubled youth. They knew that he was a ward of the Province. They knew that prior to being charged he had been living in a facility that specialized in housing troubled youths, and that he had run away from it. That NRR was fragile psychologically and might be psychologically damaged by the inevitable betrayal that he would experience at the end of the undercover operation when the only functional family he had ever been part of would be destroyed, was entirely predictable.

[431] That NRR was a ward of the Province further complicates the concern. It created a serious but apparently unrecognized dilemma. As his guardian the state had a duty to protect NRR which was incompatible with its desire, as the enforcer of the criminal law, to deceive him. In the same vein of concern is the fact that the designers of the undercover operation accessed information obtained from NRR when he was interviewed by police in October 2011 as a victim of sexual exploitation and used information thereby obtained when formulating the operation's plan. It appears not to have been a concern that accessing this information for this purpose could discourage victims of sexual abuse from reporting the crime of which they have been a victim.

[432] Another feature of the circumstances creating concern is that from before the operation commenced to after it ended, the officers involved were aware that NRR was being sexually exploited by an adult woman who had been in a position of trust toward him and who was as much as 17 years older than him. Yet, to maintain the verisimilitude of their fictional organization so that it could achieve its purpose, they did nothing to stop the sexual exploitation. Indeed by pretending to be impressed by NRR's stories of his sexual adventures with the exploiter and by encouraging him to tell them those stories, they encouraged him not to end the exploitation himself. Their position, that this matter was not part of their investigation, that it was properly the business of some other police unit, does not satisfy.

[433] In my view, permitting the use of the statements NRR made to Mr. Big would give rise to a real and serious possibility of abusive conduct by the state. It would approve and encourage the use of the Mr. Big technique even in situations where it cannot be successfully used without causing harm.

Conclusion

[434] I find that NRR has proved on a balance of probabilities that his *Charter* s. 7 protections have been violated in the circumstances.

Charter s. 24(2) - Would admission of the statements obtained from NRR through a breach of his Charter s. 7 rights bring the administration of justice into disrepute?

[435] As previously noted, this question requires consideration of three factors

- 1) the seriousness of the state conduct which constitutes the *Charter* breach,
- 2) the impact of the *Charter* breach on the *Charter*-protected rights of the accused, and
- 3) society's interest in an adjudication on the merits.

[436] In *Hart* Green C.J.N.L. considered these three factors in the context of the breach of Mr. Hart's *Charter* s. 7 right in a Mr. Big operation. He concluded that the admission into evidence of the confession Mr. Hart made to Mr. Big would bring the administration of justice into disrepute. I quoted Green C.J.N.L.'s observation in respect of each of the three factors above (see para. ? to para. ?above).

[437] I agree with and adopt Chief Justice Green's reasons on these points and come to the same conclusion as he did. I find that the admission into evidence of the confession statements made by NRR to Mr. Big would bring the administration of justice into disrepute.

***Abuse of Process
Probative Value Balanced Against Prejudicial Effect
Hearsay***

[438] Though both counsel made extensive arguments on abuse of process and the balancing of probative value against prejudicial effect, as possible alternative bases for excluding NRR's statements to Mr. Big, given my ruling in respect of the *Charter* s. 7 breach, it is not necessary for me to consider those submissions further. I previously ruled that the argument that the statements must be assessed under the principled approach to hearsay is without merit.

Conclusion

[439] I rule that the statements NRR made in the context of the Mr. Big undercover operation are inadmissible.

Heard April 8 to 30, 2013.

Dated at the City of Edmonton, Alberta this 10th day of May 2013.

**Brian R. Burrows
J.C.Q.B.A.**

Appearances:

William Wister and Patricia Hankinson
for the Crown

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for the Accused